No. 599.

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# The Supreme Court

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UNITED STATES.

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THE FIRST NATIONAL BANK OF DENVER, COLORADO, THE FIRST NATIONAL BANK OF YORK, NEBRASKA, AND HARRIS AND COMPANY, APPELLANTS,

vs.

JOHN P. KLUG AND CHARLES H. WHEELER, APPELLEES.

**BRIEF AND ARGUMENT OF APPELLEES.**

**JOHN F. SHAFROTH,**
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### Statement of the Case.

This is a proceeding in bankruptcy, instituted

by the appellants, by petition to declare the appellees an involuntary bankrupt (p. 1).

The answer of the appellee denies that the petitioners are creditors, or that he is insolvent, or that he had committed any acts of bankruptcy; denies the allegation of the amended petition that he is chiefly engaged in the business of dealing in and buying and selling cattle and horses, and affirmatively alleges that he is chiefly engaged in farming and therefore cannot be adjudged an involuntary bankrupt (p. 7).

The issues so made by the petition and answer were tried before a jury, and upon the close of the appellants testimony, the court instructed the jury to find the issues for the appellee and that he is a farmer within the meaning of bankruptcy act (p. 11).

The court found (p. p. 12-14) as facts that the appellee has for the past ten years resided in Weld county, Colorado, on a tract of land secured by him from the United States under the homestead and pre-emption laws (finding 1); that during this period he had acquired other contiguous tracts of land until at the time of the institution of these proceedings he owned 2,000 acres (finding 2); that the improvements consisted chiefly of a dwelling-house, barn, cattle-sheds, corrals, wind-mills, watering-holes and sixty miles of fencing (finding 3).

That in addition he had under lease from railroads and the state of Colorado, lands more or less

inclosed, about 18,000 acres (finding 4); that during the year 1900 he purchased 150 acres of land, 80 acres of which was cultivated in alfalfa and oats. This land was sold in the spring of 1891 (finding 5); that during 1900 he leased a tract of land of 35 or 40 acres, which was cultivated in alfalfa. The larger tract of land above mentioned was mostly what is known as grazing land; from 400 to 700 acres was in a superior quality of hay known as blue joint (finding 7).

The large tract of land was not irrigated and the hay crop raised upon it depended upon natural conditions. The wild hay crop varied from 200 to 400 tons (finding 10). The 80 acre tract of land produced about 185 tons of alfalfa and the 40 acres of leased land, about 75 tons of alfalfa (findings 10 and 11).

About 10 or 15 acres were cultivated in a garden and small grains (finding 12). He had the usual necessary farming implements (finding 13). For three years prior to the institution of these proceedings he kept from 500 to 700 head of horses also a herd of cattle, averaging about 2,000 head, the greater part of which were cows (findings 14 and 15).

He purchased a considerable amount of hay and grain to feed the cattle and horses (finding 16). That during three years he had purchased and sold cattle aggregating 1,200 head (finding 17).

That the letter heads on his stationery stated that he was a dealer in as well as a breeder in cattle and horses (finding 18). He was not chiefly engaged in the tillage or cultivation of the soil, and the horses and cattle kept and fed by him were not sustained chiefly by the wild and cultivated hay crops, produced from the land (finding 19); that he was chiefly engaged in buying, selling, breeding and raising horses and cattle which were grazed upon the land belonging to him and which he had leased, and the public range, and were fed with wild and cultivated hay crops, produced from said land and with hay and grain purchased from others in quantity and value in excess of the crops produced from the said land.

**Point I.**

We believe that if all the evidence taken upon the trial was before this court it would materially aid in determining the question involved, but sufficient appears from the findings of fact to establish that the the appellee was a farmer within the meaning of the act, and could not be adjudged an involuntary bankrupt. The act under consideration is as follows:

"Any natural person, except a wage-earner or a person engaged chiefly in farming, or the tillage of the soil, * * * may be adjudged an

involuntary bankrupt * * * ."

National Bankruptcy Act 1898, sec. 4 (b).

The exemption is not confined to persons *exclusively* engaged in farming, but it includes those who are *chiefly* so engaged. The act also clearly recognises that a person may be engaged in farming though not a tiller of the soil, for it not only includes persons engaged chiefly in farming, but those chiefly engaged in the tillage of the soil, thereby exempting from its provisions all persons chiefly engaged in one or more of the several branches of farming.

The word "farmer" as used in the statutes is one of very broad meaning. We take it to include every one who settles upon a piece of land to make for himself a home and a living by the use of the land, either husbanding its natural products or adding to its production and the value of its products, or both. He may build house, barns, fences, etc. and use all lawful means to make the land useful and efficient to him as his judgment may dictate. To cultivate the land either by raising cotton, sugar cane, corn, wheat, oats, potatoes or the grazing of stock, or raising fruit or, in a word, to plant to whatever climate the nature of the soil, surrounded by commercial facilities may be profitable.

The nature or kind of product he may attempt to procure or the amount of land he plows, does

not change him from a farmer to something else. When so located and so employing himself, whether a fruit grower in Louisiana, a wheat grower in Michigan, a sheep grower in New England, or a producer of numberless land products in Illinois, he is still a farmer.

His success or his failure does not change that fact. He may try one product and fail—he may then try another, or try a great variety, he is yet a farmer.

Take this case as it stood before the trial court. John P. Klug took up a tract of government land, according to the laws of the United States. It was a wild unused tract of land; he built him a house, fenced it, and placed other improvements thereon, got him a few cows and started to build up a home in the country. He raised cattle, made butter, raised domestic fowls and worked the land in the most profitable way.

Finding the land dry, not well adapted to the plow, he used it principally for grazing and haying purposes. To have plowed under the natural grass on the greater part of this land would have been to destroy its value. By using it as he did he made it of great value and from year to year bought other pieces of land which he fenced and added to the first—and as he became able, bought other stock, adding it to the first. He sold cattle, horses, etc. as they became fit for market—con-

tinued to increase the breeding capacity of the farm by buying other bunches of stock from time to time, thus enlarging his business and selling such as he had grown to a condition for market.

During the grazing seasons he pastured this stock upon his own land. When the winters were hard and the hay grown upon his own land was insufficient to feed his stock, he bought feed from outsiders for the purpose of carrying it through to grass against.

The main feed that developed his stock and caused its growth was the green grass on which he grazed them, through the greater part of the year, in his own pasture and on his own land. The buying of any outside feed was simply a necessary incident to assist in his farming operations and by no means a business, but an incident to a business. The same, in buying outside bunches of stock and selling the same when fitted for market was an absolute and indispensable incident to keep up the necessary and growing expenses of the farm. The 2,000 head of horn cattle which he had, were practically all cows, kept for breeding purposes.

Nor do we think that under the circumstances, his advertising upon his letter heads that he had horses and cattle to sell, would be any evidence that he was not a farmer.

## Point II.

**The decisions defining a Farm, Farming, Lands, Products of Farm and Agriculture, taken together with the definition of these words when applied to the facts in this case, bring the appellee clearly within the exemption mentioned in the statute.**

Edmond Plowden in his commentaries published in England, 1816, page 95, says: "A farm is a collective word consisting of diverse things collected together, whereof one is a messuage and the others are the lands, meadows, pasture, woods, commons and other things lying or appertaining thereto."

"A large tract or portion of land taken by a lease under a yearly rent, payable by a tenant. From this latter sense, is derived its common, modern signification of a large tract used for cultivation or other purposes, *as raising stock*, whether hired or owned by the occupant, including a messuage with out-buildings, gardens, orchards, etc.

Plowden (p. 95); Touchstone (p. 93).

"The word 'farm' originally meant, rent, and by mutual transition has come to be made the land out of which the rent issues. In American law, 'farm' denotes a tract of land *devoted in part at least, to the cultivation for agricultural purposes,*

*without reference to its extent or the tenure by which it is held.*"

Black's Law Dictionary.

Bouvier's Law Dictionary defines a farm to be "a portion of land used for agricultural purposes, *either wholly or in part.*"

"A tract of land devoted to *general or special* cultivation under a single control, whether that of its owner or tenant, as a small farm, a wheat, fruit, dairy or market farm."

Century Dictionary.

"Then, at my farm,
I have a hundred milch kine to the pail,
Six score fat oxen standing in my stalls.
And all things answerable to this portion."

Shakespeare's Taming of the Shrew;
Act II, Scene I.

Farming. "The business of cultivating land *or employing it for the purposes of husbandry;* agriculture, husbandry."

See Appellant's Brief (p 15).

"In American Law 'farm' as a noun, means a tract of land devoted to purposes of agriculture, *cattle raising*, etc."

Appellant's Brief (p. 15).

*In re* Slade's Estate, 122 Cal. 434, 436, 439.

55 P. 158, is a case which arose under the California statute, exempting the farming utensils or implements of husbandry of the judgment debtor etc. and which should be set off to the widow.

The deceased left an estate worth $30,000, consisting of 300 acres of land in one body, 150 acres of which was in an orchard, and 10 acres in a garden, and the balance in hay. And in determining what implements should be set off to the widow, it was contended that the deceased carried on three distinct occupations, towit: farming or agriculture, fruit growing or horticulture and grape growing or viticulture; that the widow was only entitled to take under one of these occupations and no more.

Judge Chapman in delivering the opinion, page 159, Pac. R. says: "We do not think that when a person engages in diversified farming, the law exempts only such of his farming utensils or implements as he may use in some one of the separate branches of his farming operations. Webster defines a farmer to be one who is devoted to the tillage of the soil, an agriculturist, a husbandman, and farmer he defines to mean the business of cultivating land. He defines husbandry to mean the business of a farmer comprehending the various branches of agriculture. The followers of this ancient and honorable occupation may call themselves, 'agriculturists' or 'viticulturists' or 'garden-

ers,' but they are farmers, and their occupation is that of farming as contemplated by the statute. The law does not deal with classes of husbandry, nor does it limit the exemptions to one particular class of husbandry out of many that may be followed by the debtor."

"In bankruptcy act, 1898, sec. 4 (b) exempting from liability to adjudication involuntary bankruptcy 'persons engaged chiefly in farming or the tillage of the soil,' the latter phrase does not limit the former, hence a person whose principal occupation is raising cattle and hogs for the market, his farm being devoted chiefly to use as pasture land and for raising grass, hay and corn wherewith to feed and fatten the stock, is not subject to be adjudicated bankrupt on the petition of his creditors, being a farmer, though not a tiller of the soil."

*In re* Thompson, 102 Fed. 287.

In construing the provisions of a statute in North Carolina exempting the products of a farm from liquor tax the court says: "The words of the statute to be interpreted are the products of his own farm. Now a farm, the farm, his farm in the ordinary sense implies land cultivated, *used in some way for the purposes of production by the owner thereof*, or some other person having a temporary estate or interest therein, and land whether covered

by forest or not, adjoining or near and made subservient thereto and used in aid thereof for the purposes of producing grain, such as wheat, Indian corn, rye, barley, cotton, fruits, hay, vegetables and the like, and perhaps live stock such as cattle, sheep, horses, swine and the like, by transmutation directly or indirectly brought about by the cultivation of the soil."

State vs. Kennerly, 98 N. Carolina, 659.
See also Am. & Eng. Enc. of Law, 2d Ed. Vol. 12, pp. 881 and 882.
Bur. Law Dict. Farm.

A farm is both by the standards and in common law acceptation defined to be a body of land usually under one ownership devoted to agriculture, either to the raising of crops or pasture or both.

It is not understood to have any necessary relation to or to be circumscribed by political or congressional subdivisions. A farm may consist of any number of acres, of one quarter section or less, or many quarter sections; of one field or many fields; may lie in one township and one county or in more than one.

Rogers vs. Cadwell, 142 Ill. 434.

The several definitions of "farm and farming" cited from dictionaries by counsel for appellant sustain the contention that the appellee is a farmer within the exemption of section 4 (b) of the act.

The citation of certain provisions from the statutes of Colorado made by counsel for appellant in their brief, are irrelevant and without application.

The statute relating to herding of cattle in Douglas and Weld counties, Colorado, (long since repealed) cited by counsel was only passed to regulate the driving of cattle through those counties and to prevent trespass by herders. A herder as defined in statutes is one employed to guard and care for cattle. He is not a cattle farmer, nor necessarily even an owner but one to whom for a season cattle may be entrusted for feeding and care.

The distinction between "domestic" and "agricultural" use of water cited by counsel for appellant gives preference to animal life rather than to the earth, which would still exist without water.

This distinction in no wise carries with it the discriminating force for which counsel for appellant contend. Nor can it in anywise be construed as a definition of the words "farmer" and "farming."

Respectfully submitted

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